



Reprinted
April 9, 2013

ENGROSSED

SENATE BILL No. 349

DIGEST OF SB 349 (Updated April 8, 2013 4:26 pm - DI 101)

Citations Affected: IC 8-1; IC 36-1.

Synopsis: Utilities; economic development. Adds to the chapter in the Indiana Code concerning donations by local units of government a provision authorizing a municipal legislative body, with the approval of the board of the municipality's municipally owned utility, to donate funds from the municipally owned utility's surplus earnings to a local economic development organization for use in maintaining existing infrastructure, as long as certain obligations of the municipally owned utility are met before the donation is made. Provides that a public utility that provides water service or wastewater service may establish a utility system improvement charge (USIC). (Current law provides only for the establishment of a distribution system improvement charge (DSIC), and provides that a DSIC can be established only by a public utility that provides water service.) Requires a public utility to annually reconcile the difference between its USIC revenues and costs. Requires USIC charges to be separately and conspicuously indicated on each customer's bill. Repeals definitions related to DSICs. Makes conforming amendments.

Effective: Upon passage; July 1, 2013.

Head, Merritt, Randolph, Broden
(HOUSE SPONSOR — FRIEND)

January 8, 2013, read first time and referred to Committee on Utilities.
January 24, 2013, amended, reported favorably — Do Pass.
January 28, 2013, read second time, ordered engrossed.
January 29, 2013, engrossed. Read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Local Government.
March 25, 2013, amended, reported — Do Pass.
April 8, 2013, read second time, amended, ordered engrossed.

ES 349—LS 6598/DI 101+



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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 349

A BILL FOR AN ACT to amend the Indiana Code concerning local government and utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-31-2 IS REPEALED [EFFECTIVE UPON
2 PASSAGE]. Sec. 2: As used in this chapter, "DSIC" refers to
3 distribution system improvement charge.
- 4 SECTION 2. IC 8-1-31-3 IS REPEALED [EFFECTIVE UPON
5 PASSAGE]. Sec. 3: As used in this chapter, "DSIC costs" means
6 depreciation expenses and pretax return associated with eligible
7 distribution system improvements.
- 8 SECTION 3. IC 8-1-31-4 IS REPEALED [EFFECTIVE UPON
9 PASSAGE]. Sec. 4: As used in this chapter, "DSIC revenues" means
10 revenues produced through a DSIC exclusive of revenues from all other
11 rates and charges.
- 12 SECTION 4. IC 8-1-31-5 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in this chapter,
14 "eligible ~~distribution utility~~ system improvements" means new used
15 and useful water ~~utility~~ **distribution or wastewater collection** plant
16 projects that:
17 (1) do not increase revenues by connecting the ~~distribution utility~~

ES 349—LS 6598/DI 101+



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1 system to new customers;
 2 (2) are in service; and
 3 (3) were not included in the public utility's rate base in its most
 4 recent general rate case.

5 SECTION 5. IC 8-1-31-6 IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter,
 7 "pretax return" means the revenues necessary to:

- 8 (1) produce net operating income equal to the public utility's
- 9 weighted cost of capital multiplied by the net original cost of
- 10 eligible ~~distribution~~ **utility** system improvements; and
- 11 (2) pay state and federal income taxes applicable to such income.

12 SECTION 6. IC 8-1-31-7.5 IS ADDED TO THE INDIANA CODE
 13 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: **Sec. 7.5. As used in this chapter, "USIC" refers**
 15 **to a utility system improvement charge.**

16 SECTION 7. IC 8-1-31-7.6 IS ADDED TO THE INDIANA CODE
 17 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 18 UPON PASSAGE]: **Sec. 7.6. As used in this chapter, "USIC costs"**
 19 **means depreciation expenses and pretax return associated with**
 20 **eligible utility system improvements.**

21 SECTION 8. IC 8-1-31-7.7 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 23 UPON PASSAGE]: **Sec. 7.7. As used in this chapter, "USIC**
 24 **revenues" means revenues produced through a USIC exclusive of**
 25 **revenues from all other rates and charges.**

26 SECTION 9. IC 8-1-31-8 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as provided in
 28 subsection (d), a public utility providing water **or wastewater utility**
 29 service may file with the commission rate schedules establishing a
 30 ~~DSIC~~ **USIC** that will allow the automatic adjustment of the public
 31 utility's basic rates and charges to provide for recovery of ~~DSIC~~ **USIC**
 32 costs.

33 (b) The public utility shall serve the office of the utility consumer
 34 counselor a copy of its filing at the time of its filing with the
 35 commission.

36 (c) Publication of notice of the filing is not required.

37 (d) A public utility may not file a petition under this section in the
 38 same calendar year in which the public utility has filed a request for a
 39 general increase in the basic rates and charges of the public utility.

40 SECTION 10. IC 8-1-31-9 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) When a
 42 petition is filed under section 8 of this chapter, the commission shall

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conduct a hearing.

(b) The office of the utility consumer counselor may examine information of the public utility to confirm that the **utility** system improvements are in accordance with section 5 of this chapter, to confirm proper calculation of the proposed charge, and submit a report to the commission not later than thirty (30) days after the petition is filed.

(c) The commission shall hold the hearing and issue its order not later than sixty (60) days after the petition is filed.

(d) If the commission finds that a ~~DSIC~~ **USIC** petition complies with the requirements of this chapter, the commission shall enter an order approving the petition.

SECTION 11. IC 8-1-31-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Except as provided in subsection (b), a public utility may, but is not required to, file a petition for a change in its ~~DSIC~~ **USIC** not more often than one (1) time every twelve (12) months.

(b) Except as provided in section 15 of this chapter, a public utility may not file a petition for a change in its ~~DSIC~~ **USIC** in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

SECTION 12. IC 8-1-31-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. The commission may not approve a ~~DSIC~~ **USIC** to the extent it would produce total ~~DSIC~~ **USIC** revenues exceeding five percent (5%) of the public utility's base revenue level approved by the commission in the public utility's most recent general rate proceeding.

SECTION 13. IC 8-1-31-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. The ~~DSIC~~ **USIC** may be calculated based on a reasonable estimate of sales in the period in which the charge will be in effect. At the end of each twelve (12) month period ~~the charge is in effect, following the date on which the commission initially approves a USIC for a public utility following the public utility's most recent general rate case,~~ and using procedures approved by the commission, the public utility shall reconcile the difference between ~~DSIC~~ **USIC** revenues and ~~DSIC~~ **USIC** costs during ~~that the twelve (12) month period~~ and recover or refund the difference, as appropriate, through adjustment of the charge.

SECTION 14. IC 8-1-31-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. A public utility that has implemented a ~~DSIC~~ **USIC** under this chapter shall file revised rate schedules resetting the charge if new basic rates and charges

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1 become effective for the public utility following a commission order
2 authorizing a general increase in rates and charges that includes in the
3 utility's rate base eligible ~~distribution~~ **utility** system improvements
4 reflected in the ~~DSIC~~ **USIC**.

5 SECTION 15. IC 8-1-31-15.5 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2013]: **Sec. 15.5. A public utility shall:**

- 8 **(1) indicate separately and conspicuously on each customer's**
- 9 **bill the total charge attributable to any USIC; and**
- 10 **(2) identify the charge described under subdivision (1) as a**
- 11 **"utility system improvement charge".**

12 SECTION 16. IC 8-1-31-16 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. For purposes
14 of IC 8-1-2-42(a), the filing of a ~~DSIC~~ **USIC** and a change in a ~~DSIC~~
15 **USIC** is not a general increase in basic rates and charges.

16 SECTION 17. IC 8-1-31-17 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. The
18 commission may adopt by rule under IC 4-22-2 or by order other
19 procedures not inconsistent with this chapter that the commission finds
20 reasonable or necessary to administer a ~~DSIC~~ **USIC**.

21 SECTION 18. IC 36-1-14-1.5 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2013]: **Sec. 1.5. (a) As used in this section,**
24 **"local economic development organization" includes the following:**

- 25 **(1) A nonprofit corporation established under state law whose**
- 26 **primary purpose is the promotion of industrial or business**
- 27 **development in Indiana, the retention or expansion of Indiana**
- 28 **businesses, or the development of entrepreneurial activities in**
- 29 **Indiana.**
- 30 **(2) A nonprofit educational organization whose primary**
- 31 **purpose is educating and developing local leadership for**
- 32 **economic development initiatives.**
- 33 **(3) Any similar organization, including a partnership between**
- 34 **private enterprise and one (1) or more units, the purposes of**
- 35 **which include:**
 - 36 **(A) promoting development activities in one (1) or more**
 - 37 **units;**
 - 38 **(B) coordinating local efforts to attract jobs and new**
 - 39 **business investment;**
 - 40 **(C) providing assistance to existing businesses to foster**
 - 41 **growth and job retention; and**
 - 42 **(D) sustaining and improving the quality of life in the units**

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1 served.
2 (b) A municipal legislative body, with the approval of the board
3 (as defined in IC 8-1.5-3-2) of the municipality's municipally owned
4 utility, may donate funds from the municipally owned utility's
5 surplus earnings (as defined in IC 8-1.5-3-11) to a local economic
6 development organization for use by the local economic
7 development organization for the maintenance of existing
8 infrastructure, as long as terms and conditions of any bond
9 ordinance, resolution, indenture, contract under IC 8-1-2.2, or
10 similar instrument binding upon the municipally owned utility are
11 complied with before the donation is made.
12 SECTION 19. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 349, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 349 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning local government and utilities.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-31-2 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 2: As used in this chapter, "DSIC" refers to distribution system improvement charge.

SECTION 2. IC 8-1-31-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: As used in this chapter, "DSIC costs" means depreciation expenses and pretax return associated with eligible distribution system improvements.

SECTION 3. IC 8-1-31-4 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 4: As used in this chapter, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

SECTION 4. IC 8-1-31-5 IS AMENDED TO READ AS FOLLOWS

ES 349—LS 6598/DI 101+



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[EFFECTIVE UPON PASSAGE]: Sec. 5. As used in this chapter, "eligible ~~distribution utility~~ **distribution or wastewater collection** system improvements" means new used and useful water utility **distribution or wastewater collection** plant projects that:

- (1) do not increase revenues by connecting the ~~distribution utility~~ system to new customers;
- (2) are in service; and
- (3) were not included in the public utility's rate base in its most recent general rate case.

SECTION 5. IC 8-1-31-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "pretax return" means the revenues necessary to:

- (1) produce net operating income equal to the public utility's weighted cost of capital multiplied by the net original cost of eligible ~~distribution utility~~ system improvements; and
- (2) pay state and federal income taxes applicable to such income.

SECTION 6. IC 8-1-31-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. As used in this chapter, "USIC" refers to a utility system improvement charge.**

SECTION 7. IC 8-1-31-7.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.6. As used in this chapter, "USIC costs" means depreciation expenses and pretax return associated with eligible utility system improvements.**

SECTION 8. IC 8-1-31-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.7. As used in this chapter, "USIC revenues" means revenues produced through a USIC exclusive of revenues from all other rates and charges.**

SECTION 9. IC 8-1-31-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as provided in subsection (d), a public utility providing water **or wastewater utility** service may file with the commission rate schedules establishing a ~~DSIC~~ **USIC** that will allow the automatic adjustment of the public utility's basic rates and charges to provide for recovery of ~~DSIC~~ **USIC** costs.

(b) The public utility shall serve the office of the utility consumer counselor a copy of its filing at the time of its filing with the commission.

(c) Publication of notice of the filing is not required.

(d) A public utility may not file a petition under this section in the

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same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

SECTION 10. IC 8-1-31-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) When a petition is filed under section 8 of this chapter, the commission shall conduct a hearing.

(b) The office of the utility consumer counselor may examine information of the public utility to confirm that the **utility** system improvements are in accordance with section 5 of this chapter, to confirm proper calculation of the proposed charge, and submit a report to the commission not later than thirty (30) days after the petition is filed.

(c) The commission shall hold the hearing and issue its order not later than sixty (60) days after the petition is filed.

(d) If the commission finds that a ~~DSIC~~ **USIC** petition complies with the requirements of this chapter, the commission shall enter an order approving the petition.

SECTION 11. IC 8-1-31-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Except as provided in subsection (b), a public utility may, but is not required to, file a petition for a change in its ~~DSIC~~ **USIC** not more often than one (1) time every twelve (12) months.

(b) Except as provided in section 15 of this chapter, a public utility may not file a petition for a change in its ~~DSIC~~ **USIC** in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

SECTION 12. IC 8-1-31-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. The commission may not approve a ~~DSIC~~ **USIC** to the extent it would produce total ~~DSIC~~ **USIC** revenues exceeding five percent (5%) of the public utility's base revenue level approved by the commission in the public utility's most recent general rate proceeding.

SECTION 13. IC 8-1-31-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. The ~~DSIC~~ **USIC** may be calculated based on a reasonable estimate of sales in the period in which the charge will be in effect. At the end of each twelve (12) month period ~~the charge is in effect~~, **following the date on which the commission initially approves a USIC for a public utility following the public utility's most recent general rate case**, and using procedures approved by the commission, the public utility shall reconcile the difference between ~~DSIC~~ **USIC** revenues and ~~DSIC~~ **USIC** costs during ~~that the twelve (12) month~~ period and recover or



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refund the difference, as appropriate, through adjustment of the charge.

SECTION 14. IC 8-1-31-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. A public utility that has implemented a ~~DSIC~~ **USIC** under this chapter shall file revised rate schedules resetting the charge if new basic rates and charges become effective for the public utility following a commission order authorizing a general increase in rates and charges that includes in the utility's rate base eligible ~~distribution~~ **utility** system improvements reflected in the ~~DSIC~~ **USIC**.

SECTION 15. IC 8-1-31-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 15.5. A public utility shall:**

- (1) indicate separately and conspicuously on each customer's bill the total charge attributable to any USIC; and**
- (2) identify the charge described under subdivision (1) as a "utility system improvement charge".**

SECTION 16. IC 8-1-31-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. For purposes of IC 8-1-2-42(a), the filing of a ~~DSIC~~ **USIC** and a change in a ~~DSIC~~ **USIC** is not a general increase in basic rates and charges.

SECTION 17. IC 8-1-31-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. The commission may adopt by rule under IC 4-22-2 or by order other procedures not inconsistent with this chapter that the commission finds reasonable or necessary to administer a ~~DSIC~~ **USIC**."

Page 2, after line 14, begin a new paragraph and insert:

"SECTION 19. **An emergency is declared for this act.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 349 as printed January 25, 2013.)

NEESE, Chair

Committee Vote: yeas 6, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 349 be amended to read as follows:

Page 5, line 6, after "organization" insert "**for use by the local economic development organization for the maintenance of existing infrastructure,**".

(Reference is to ESB 349 as printed March 26, 2013.)

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